

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RAYMOND L. EICHENBERGER,

:

Plaintiffs,

:

v.

:

TERRI B. JAMISON, et al.,

:

Defendants.

:

Case No. 2:20-cv-1543

JUDGE SARAH D. MORRISON

MAGISTRATE JUDGE JOLSON

ORDER

Magistrate Jolson’s June 15, 2020 Report and Recommendation and Order (“R&R”) (ECF No. 15) denies Plaintiff Raymond Eichenberger’s Motion to Strike and Motion for Sanctions (ECF No. 12). The R&R also extended Mr. Eichenberger’s response deadline for Defendant Maxine Irwin’s Motion to Dismiss (ECF No. 9) . Mr. Eichenberger presently objects (“Objection”) to the R&R. (ECF No. 16.)

The Court begins by reviewing Mr. Eichenberger’s request to strike Ms. Irwin’s Motion to Dismiss, in which he characterizes the motion as “vile,” “defamatory,” and “irrelevant to the issues at bar.” (ECF No. 12 at 2.) He wants an order striking the filing under Fed. R. Civ. P. 12(f). The R&R correctly stated “a ‘motion to strike’ applies only to pleadings” and therefore denied the motion. (ECF No. 15 at 2) (citing *Shell v. Ohio Family Rights*, No. 1:15CV1757, 2016 WL 4523830, at *2 (N.D. Ohio Aug. 29, 2016)). Mr. Eichenberger’s Objection does not address this holding, so further comment on this aspect of the R&R is unnecessary.

Next, Mr. Eichenberger alternatively moved to strike Ms. Irwin’s Motion to Dismiss and award him \$1,000 as sanctions under Fed. R. Civ. P. 11(b) because the filing was an “unsightly

and unethical attempt by Defendant Irwin and her counsel to unjustly and unnecessarily disparage the character of the Plaintiff” designed to harass him. (ECF No. 12 at 3.) The R&R rejected that request for failure to comport with the rule itself. Specifically, a Rule 11(b) motion must: (1) “be made separately from other motions or requests”; (2) “describe the specific conduct alleged to violate subdivision (b)”; and (3) “be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.” (Rule 11(c)(2)). Because Mr. Eichenberger’s Motion for Sanctions satisfied none of those requirements, the R&R denied the motion.

Mr. Eichenberger’s Objection as to that portion of the ruling does not address those fatal defects. Instead, he argues that the Court has inherent authority under Rule 11(c)(1) to strike “intentionally defamatory and libelous material from Court filings without even the filing of a [m]otion by the aggrieved party.” (ECF No. 16 at 2-4.) Even if the Court has such authority, there is no need to exercise it here; the Court has reviewed the filing and finds it to lack such material.

Mr. Eichenberger’s combined motion also sought an additional twenty-one days to respond to Ms. Irvin’s Motion to Dismiss in the event his motion was denied. (ECF No. 12 at 5.) The June 15, 2020 R&R set a deadline of June 19, 2020 for his opposition. (ECF No. 15 at 1.) His Objection provides that he did not receive the R&R until June 18, 2020 making a timely filing impossible. (ECF No. 16 at 1.) This Objection is **SUSTAINED**. Mr. Eichenberger shall file his Opposition to Ms. Irvin’s Motion to Dismiss on or before August 10, 2020. Because Ms.

Irvin's motion has been pending since May 21, 2020, no further extensions of this deadline will be granted absent extraordinary cause.

Mr. Eichenburger objects to the R&R's failure to address his request to strike "extraneous material and exhibits outside of the four corners of the Complaint which were presented by Defendant Irvin's highly defamatory Motion to Dismiss." (ECF No. 16 at 4.) His Objection is **OVERRULED**, as those arguments may be addressed in Mr. Eichenberger's Opposition.

In sum, after *de novo* review, the Court **OVERRULES** Mr. Eichenberger's Objections in part and **SUSTAINS** the Objections in part in accordance with the above. The Court **ADOPTS** the R&R consistent with those holdings. Lastly, the May 20, 2020 Amended Complaint renders the April 29, 2020 Motion to Dismiss of Defendants Judge Terri Jamison and Franklin County, Ohio **MOOT**. (ECF No. 2.)

IT IS SO ORDERED.

/s/Sarah D. Morrison
SARAH D. MORRISON
UNITED STATES DISTRICT JUDGE